[APPELLATE CIVIL JURISDICTION]
TERRELL, Ag. C.J.
September 28, 1933.

CHONG HIN.....Appellant

v.

YAP SIN YEE Respondent

[SELANGOR MAGISTRATE'S CIVIL APPEAL No. 27 of 1933]

Land Code 1926, ss.138, 141, 149,—Notice to Chargor—Waiver of irregularity.

Under a charge dated 17th July, 1931 the payment of $5,000 was secured. The charge provided for repayment by twenty instalments each of $250 with interest. The first of such instalments was payable on 17th August, 1931 and in respect of this the chargor defaulted.

The charge contained no provision to the effect that on default in paying any instalment the whole principal should become due and payable.

The chargee gave notice in writing on 27th October, 1931 calling on him to pay "the principal sum of $5,000 and interest due" on the charge.

Held that, although the notice was bad inasmuch as the whole principal of $5,000 was not at that time due, as the chargor appeared at the hearing before the Collector and raised no objection to the form of the notice, the irregularity had been waived and the Collector was not deprived of jurisdiction.

Lau Yau Weng v. *Bank of Malaya*, (1931-1932) F.M.S.L.R. followed.

Morrison for Appellant.

W. G. W. Hastings for Respondent.

Cur. Ad. Vult.

TERRELL, AG. C. J.—This was an appeal against the order of an Assistant Collector of Land Revenue directing that certain mining land be sold by auction to recover $5,000 principal and $1,725 for interest. The order was dated the 19th June, 1933. The charge was dated the 17th July, 1931, and provided for the payment of the $5,000 by twenty instalments of $250 the first of such instalments being payable with interest on the 17th August, 1931. The chargor defaulted with payment of the first instalment, and on the 27th October, 1931 the chargee served a notice calling upon the chargor 'to pay the principal sum of $5,000 and interest due' on the charge. The notice did not specify a time for payment, and there was no provision in the charge that default in paying any instalment made the whole principal due and payable.

Section 133(i) of the Land Code provides that

> "if default is made in the payment of the.... periodical payment.....secured by a charge"

the chargee may give the chargor notice in writing

> "to pay within a time to be specified in the notice, but not less than 30 days, the money *due and owing* on such charge."

I have no doubt that the notice did not comply with Section 133(i). There can be no question that no time for payment was specified, and although the $5,000 was certainly owing, it was not 'due and owing' as only one instalment was in fact 'due and owing.'

No objection was, however, taken to the form of the notice before the Collector, and unless the defect in the notice deprived the Collector of jurisdiction, it is quite clear that any technical defect in the form of the notice would not vitiate the proceedings—*S. R. M. M. A. Supramanian Chetty* v. *S. P. Mohamed Ibrahim*, 3 F.M.S.L.R. 91, and *Lau Yau Weng and others* v. *The Bank of Malaya Ltd.*, (1931-1932) F.M.S.L.R.

It was argued, however, that under section 141(ii) the Collector has no jurisdiction unless the notice is in proper form. The sub-section reads:

> "Thereupon the Collector, if he is satisfied that notice has been given as above provided, shall fix a day and hour and place etc."

The Collector was satisfied because the chargor appeared and raised no objection to the form of the notice.

If the deficiency in the notice deprives the Collector of jurisdiction under section 141 in the case of land held under entry in the Mukim Register, it is clear that such deficiency would also deprive the Court of jurisdiction under section 149 in the case of land held under certificate of title. Under section 149 the jurisdiction of the Court arises when the chargee has given the chargor a notice under section 138, default has been made, and the chargor has been summoned before the Court to show cause why the land should not be sold. Thereupon 'if no cause is shown to the satisfaction of the Court' a sale is ordered. If a valid notice is a condition precedent in the one case it is in the other, but in the two cases cited though the point was not argued, it is clear that the notices were not in the proper form, and that the Court notwithstanding had jurisdiction.

I think, therefore, that the argument as to jurisdiction fails and that the irregularity in the form of the notice was waived.

As regards the amount due on the charge, I see no reason to differ from the findings of the Collector.

I would, therefore, dismiss the appeal with costs.

Appeal dismissed.

[ORIGINAL CIVIL JURISDICTION]
MUDIE, J.
November 21, 1933.

SEONG SAM.....Plaintiff

v.

GOON FOOD ON.....Defendant.

[PERAK CIVIL SUIT No. 158 of 1933]

Common Gaming Houses Enactment, 1912—Public Lottery—Contract Enactment, 1899—Wagering Contract—Suit by purchaser of a share in lottery ticket to recover share of the prize—Taint of illegality—Illegal and void contract differentiated.